



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,272	11/05/2004	Shaun Hopkins	62694-022	5961
33401 7590 06/27/2008 MCDERMOTT WILL & EMERY LLP 2049 CENTURY PARK EAST 38th Floor LOS ANGELES, CA 90067-3208				
EXAMINER				
LEVY, NEIL S				
ART UNIT		PAPER NUMBER		
1615				
MAIL DATE		DELIVERY MODE		
06/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,272

Applicant(s)

HOPKINS, SHAUN

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-US)
Paper No(s)/Mail Date 11/05/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3, 4, 7-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Please correct spelling and any and any informalities and correct (or at claim 2, line 2). See claim 15-23 "...in any one of..." Examiner is unfamiliar with tethanolamine. Please provide structures. Also, what is "light" liquid paraffin?

"User" is indefinite-who is the user? And how used?

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 10, 36-46 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility. The claimed invention is directed to non-statutory subject matter. "

Claim 10, 36-46 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible.

asserted utility or a well established utility for the reasons set forth above, one

skilled in the art clearly would not know how to use the claimed invention.

"users" are not patentable subject matter.

Those who use are not statutory subject matter, nor are the ways and means of use identified.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 5, 7, 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by BLUM et al 5885600.

See column 6, line 46 and column 7, line 14. Water, neem oil, propylene glycol, triethanolamine, propyl paraben and light paraffin oil provide the essence of the instant composition; surfactants include stearates (column 4, lines 43-45).

Also useful are thyme (column 5, top) ,and lice are repelled (column 4, bottom).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 2, 5, 7, 19, 22 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over MARENICK et al. us 2006/0105005

See claim 6: neem oil, tea tree, thyme, lavender with claim 8, nettle and humectants of propylene glycol (claim 3) with water, triethanolamine, methyl paraben and propyl paraben and glycol stearate [0028].

Art Unit: 1615

These components are combinable in one multi-use topical composition. Concentrations are indicated in Tables; water to 80%, triethanolamine at 0.05-5%, propyl and methyl paraben at 0.1-5%; Cetyl alcohol 2.5-7.5%; glyceryl stearate at 0.1-5%; paraffin at 0.5-5%; lavender at 0.5-5%, as other oils. Thus, neem oil would be expected to be 0.5-5% also, as would tea tree, thyme and nettle.

Claim 1-9, 11-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over MARENICK et al in view of VROMAN WO 01/85112.

For MARENICH, see rejection above

For VROMAN, see Table 1: water, cetyl alcohol, 5-7% cetrimonium chloride, and tea tree oil, lavender oil, triethanolamine and parabens are all at about the instant %. Also useful is neem oil and nettle (page 4, top) ceteryl alcohol, propylene glycol (page 4, bottom).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the Marenick modified as desired to increase range of use of a topical composition, in order to provide repellency.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

Art Unit: 1615

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
Primary Examiner, Art Unit 1615